



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

JAN 16 9 40 AM '98

**MEMORANDUM**

To: The Commission

From: Lawrence M. Noble  
General Counsel

By: Lois G. Lerner *LP*  
Associate General Counsel

Subject: Request for Suspension of the Rules

January 16, 1998

**SENSITIVE**

JAN 21 1998

**EXECUTIVE SESSION**

**SUBMITTED LATE**

This Office requests suspension of the rules to allow consideration of the Office of the General Counsel's Report in MUR 3774, dated January 15, 1998, during the Executive Session agenda for January 21, 1998. This report addresses the same respondent and issues addressed in the General Counsels Report in the same matter, dated December 11, 1997, presently scheduled for the January 21 Executive Session.

Staff Assigned: Dawn Odrowski  
Jose M. Rodriguez  
Anne Weissenborn



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *Red*

DATE: January 16, 1998

SUBJECT: NUR 3774 - General Counsel's Report (LATE SUBMISSION)

The attached is submitted as an Agenda document for the Commission  
Meeting of January 21, 1998

Open Session \_\_\_\_\_ Closed Session XX

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☐

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

☐

MUR

☐

DSP

☐

STATUS SHEETS

☐

Enforcement

☐

Litigation

☐

PFESP

☐

RATING SHEETS

☐

AUDIT MATTERS

☐

LITIGATION

☐

ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

☐

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

National Republican Senatorial Committee  
Stan Huckaby, as treasurer

)  
)  
)  
)  
)  
)

MUR 3774

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

This matter was initiated by a complaint filed by the Democratic Senatorial Campaign Committee ("DSCC") alleging that the National Republican Senatorial Committee ("NRSC") violated the Federal Election Campaign Act of 1971, as amended, (the "Act"), and Commission regulations by funneling \$847,000<sup>1</sup> in non-federal funds to non-profit organizations in order to influence certain U.S. Senate elections in 1992, 1993 and 1994.<sup>2</sup> This report discusses the evidence obtained thus far in light of the NRSC's request for conciliation prior to a finding of probable cause to believe.

---

<sup>1</sup> At this time and for purposes of discussion and the conciliation agreement, the amount at issue in this matter totals \$840,000. This reduction results from the Commission's reason to believe/no further action determinations against the Good Government Committee

<sup>2</sup> The specific Senate races named in the complaint or identified through discovery include the 1992 U.S. Senate elections in Idaho, Ohio, Oregon, North Carolina, South Carolina and Wisconsin and the general election run-off in Georgia. Other races identified include the 1993 U.S. Senate special and run-off elections in Texas and the 1994 U.S. Senate general elections in Pennsylvania and Minnesota.

On August 1, 1995, the Commission found reason to believe, inter alia, that the NRSC violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).<sup>3</sup> As was stated in the General Counsel's Report in this matter dated January 8, 1997, these findings were based in part upon the Commission's then long-standing position that party committees were incapable of making independent expenditures on behalf of their candidates. As a result, certain party expenditures attributable to clearly identified candidates were presumed to have been coordinated with those candidates and were subject to the limitations set forth at 2 U.S.C. § 441a(d); if such limitations were exceeded, the party committee in question was deemed to be in violation of 2 U.S.C. § 441a(f). However, in June 1996, after the Commission's reason to believe findings in this matter and after this investigation was underway, the Supreme Court in Colorado Republican Federal Campaign Committee v. FEC, 116 S.Ct. 2309 (1996), ("Colorado Republicans"), rejected the concept of presumed coordination and held that political parties could make expenditures independently of candidates, which would not be subject to the limitations of Section 441a(d). In this decision, the Court left unanswered the question of whether coordinated party expenditures can be limited constitutionally, and remanded the case to the lower courts to resolve this issue. 116 S. Ct. at 2319. The Court did not address the content of the types of communications at issue in the case, and thus did not make determinations as to whether an

<sup>3</sup> The Commission also found reason to believe that the three main recipient non-profit organizations, National Right to Life Committee, Inc. ("NRLC"), American Defense Foundation ("ADF"), and Coalitions for America ("CFA"), violated 2 U.S.C. § 441b(a). In addition, based on disclosure reports appended to the complaint, the Commission found reason to believe that Minnesota Citizens Concerned for Life Committee, Inc. ("MCCL") and its separate segregated fund, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC") violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a) by apparently using funds from MCCL's general treasury account to pay for the independent expenditures involving the costs of telephone calls later reimbursed by MCCL PAC. The complaint suggested that the funds advanced by MCCL for these independent expenditures came from the NRSC via the NRLC.

“electioneering message” as opposed to some other type of message, is the appropriate measure of an advertisement’s content for purposes of 2 U.S.C. § 441a(d).

In light of the Court’s decision in Colorado Republicans, this Office sought, and the Commission approved, additional formal discovery seeking information concerning NRSC’s contacts with relevant Senate candidates, their committees or their agents in order to pursue a Section 441a(f) violation against the NRSC for exceeding the Section 441a(d) limit. This discovery also sought information from the recipient groups about their contacts with campaigns and common vendors, as well as additional information about their activities or the activities of others to whom NRSC funds appeared to have been further transferred.

Respondents’ request for a meeting to discuss conciliation came just after the depositions of three primary NRSC witnesses had been scheduled and before this Office had the opportunity to question anyone from the relevant campaigns about their knowledge of NRSC payments, contacts they may have had with the NRSC about these payments, contacts with or knowledge the campaigns might have had about the recipient groups’ activities and the resulting effect the payments may have had upon get-out-the-vote (“GOTV”) plans and strategies. However, through depositions of key NRSC players and members of the recipient organizations, and documents obtained from numerous sources, the investigation thus far has revealed evidence of actual coordination between the NRSC and the relevant candidates, their committees or agents to support the Commission’s finding of a Section 441a(f) violation against the NRSC for exceeding the Section 441a(d) limits.<sup>4</sup> In addition, because the NRSC made payments with non-federal funds to groups for GOTV activity with knowledge about how the funds would be used

---

<sup>4</sup> As is shown in the discussion at Section III, evidence is stronger as to some campaigns and years than others.

including, in most cases, specifically which federal elections would be targeted, there is also sufficient evidence to support the Commission's findings of reason to believe the NRSC violated Sections 441a(f), 441b(a) and 102.5(a).

To expedite matters in the event that pre-probable cause conciliation is not successful, particularly in light of statute of limitations concerns, this Office will soon be recommending additional discovery to be sent out after any moratorium on discovery has expired (see General Counsel's Report in this matter dated December 10, 1997). This further discovery will focus primarily on 1994 activity and on the candidates benefited by the NRSC payments to non-profit organizations. See Section VI below.

## **II. SUMMARY OF INVESTIGATION**

The investigation in this matter encompassed ten Senate elections over a three-year period. Discovery included the issuance of twenty-six subpoenas for documents/orders to produce written answers, four in 1995 and twenty-two in 1997. Approximately 4,700 pages of documents have been produced; about 1,545 have come from one source, the American Defense Foundation ("ADF"). Document responses frequently have been incomplete and required multiple follow-up requests. The Commission had to file a subpoena enforcement suit against the National Right To Work Committee to compel them to produce documents. Four other such suits were threatened after multiple follow-up communications failed to produce sufficient responses.

In addition, on February 4, 1997, the Commission authorized the issuance of twenty-three subpoenas for depositions. Fourteen depositions were taken between April 25 and September 25, 1997. Of the nine people whose depositions were not taken, two were interviewed by telephone. Depositions of two representatives of Minnesota Citizens Concerned

for Life Committee, Inc. ("MCCL") were postponed pending receipt of bank records and have not been rescheduled in light of the NRSC's request for conciliation. A subpoena enforcement suit was filed against Coalitions for America President Eric Licht to compel him to appear for a deposition. His was the last deposition taken. The remaining five depositions have been deemed of less potential value, although one, that of former NRSC Chairman Phil Gramm, may be taken if the case proceeds.

Finally, three motions to quash/motions to dismiss were also filed and ruled upon by the Commission in this matter.

### **III. SUMMARY OF EVIDENCE<sup>5</sup>**

Because this investigation covers two election cycles and involves many deponents, a list of the key players and their roles as it relates to this investigation is included as a separate attachment to this report. Attachment 1. Copies of the depositions referenced below are available in OGC's Docket Office.

Over a period of three years and in close proximity to Senate elections in 1992, 1993 and 1994, the NRSC made a total of \$840,000 in payments from its non-federal account to three non-profit groups, the National Right to Life Committee, Inc. ("NRLC"), the American Defense Foundation ("ADF") and the Coalitions for America ("CFA"). In its response to the Commission's reason to believe findings, the NRSC characterized the payments to non-profits as arms-length transactions which were part of an historical pattern of contributions it made to a

---

<sup>5</sup> This Office took the depositions of a number of people from the same organization. In many cases memories differed as to the same events, or more likely, one person testified to a meeting or an event that another person did not "specifically recall." Thus, the affirmative facts discussed here are drawn chiefly from the testimony of the deponent(s) whose testimony was the most detailed.

variety of nonpartisan and non-profit organizations. Later, in response to interrogatories, the NRSC acknowledged that it knew that two of the non-profits -- ADF and NRLC -- intended to undertake activities aimed at turning out supporters to vote in federal elections. However, NRSC maintained either that it did not know where these planned activities would take place (as to NRLC) or that the activity would be nationwide (as to ADF).

The evidence adduced thus far, however, contrasts with the NRSC's characterizations. It shows that the NRSC made the payments to these groups with the intent that the funds would be used primarily for phone calls and mailings aimed at turning out favorable voters and with knowledge that the groups would use these funds for GOTV activities aimed at specific Senate elections.

Two individuals were involved in most, if not all, of NRSC's non-federal payments over the three year period: Paul Curcio, NRSC's Political Director in 1992-1994, who gave written or oral approval for most of the disbursements and Curt Anderson, who was NRSC's Southern Regional Director in 1992. Though Anderson left NRSC at the end of 1992, he worked as a consultant with the recipient groups who received the NRSC's 1993 and 1994 non-federal payments at the time they were made. For most of 1993, Anderson worked as a private political consultant whose clients included the NRLC and ADF.<sup>6</sup> Anderson continued to serve as a paid consultant to NRLC in 1994 when NRSC made its 1994 payments to that group. At the same

---

<sup>6</sup> Anderson was actually paid by the American Defense Institute ("ADI"), a 501(c)(3) organization related to ADF and operated by the same persons. However, ADF transferred much of the funds received from the NRSC to ADI which then paid the salaries of Anderson and others working on MVP. Thus, throughout this report, references to ADF may include activities actually conducted under the aegis of ADI.



time, Anderson was also employed by the Republican National Committee as its Midwestern Field Director.

What has been learned about the facts and circumstances surrounding the NRSC's non-federal payments to the recipients over the three year period at issue is discussed below.

## **A. FACTS & ANALYSIS**

### **1. Anderson's Pre-1992 Connections to Recipients**

Integral to understanding the full circumstances surrounding the NRSC's payments to the recipients is Curt Anderson's role in the 1989-90 election cycle as NRSC Coalitions Director because, through this role, Anderson gained knowledge of the workings of various "coalitions groups" such as NRLC and ADF.<sup>7</sup> Anderson's primary function as Coalitions Director was to assist the Republican party in its efforts to reach out to different constituencies and to assist campaigns in doing so, primarily to help elect Republican Senate candidates. *See* Curt Anderson at 32-33.

More details about Curt Anderson's work with coalitions groups came to light after Anderson had been deposed and NRSC counsel had requested conciliation, through an NRSC "Coalition Building Manual", obtained through other sources.<sup>8</sup> Attachment 2. The Manual, written after the 1990 election cycle for use by Republican Senate campaigns, details how

---

<sup>7</sup> The Coalitions Director position was part of the NRSC's Political Division.

<sup>8</sup> Following the appearance of an article about the Coalitions Manual in the November 26, 1997 issue of The Hill, this Office sent a letter to counsel for the NRSC and Mr. Anderson inquiring about it. Despite the fact that this was an NRSC document, counsel for the NRSC responded in a letter dated December 29, 1997 that "[n]either the NRSC nor Mr. Anderson has a copy of the Manual and neither 'overlooked' it in their respective searches for responsive documents subject to the Commission's subpoenas."

campaigns can work with coalitions groups to win elections and references some of the ways the NRSC itself has done this. It also shows that the NRSC maintained detailed information about coalitions groups on both national and statewide levels. As this Manual appears to have been written after the 1990 elections, when NRSC management had phased out the Coalitions Director position, and because it contains Anderson's name as a contact, this Office believes the Manual was written by Anderson. Attachment 2 at 22.

Throughout the Manual, the NRSC stresses the importance to a campaign of working with groups that engage in grassroots lobbying efforts and direct voter contact in order to aid a candidate's election effort. To this end, the Manual instructs campaigns to gather information about various coalitions with whom they can work and contains a sample "constituent group profile" used by the NRSC in the 1990 Senate election which shows the type of information it maintained about such groups. Attachment 2 at 7-9. The sample included in the Manual demonstrates that the NRSC possessed information such as total group membership and geographic concentration, the kind of database kept by a group (e.g., 42,000 identified pro-lifers), how a particular group communicates with members, the groups' relationship and recent contacts with Senate candidates, and the group's budget and funding sources. The Manual also contains lists and descriptions of groups "who have been the most active in encouraging their constituents to support Republican candidates," and states that the NRSC is available to give campaigns ideas of what many national groups have done in previous campaign cycles. Attachment 2 at 21. Most of this list of groups has been redacted in the copy of the Manual obtained, but it does include the National Right to Life Committee/PAC. Because this Office did not obtain this Manual until recently, we cannot determine for a fact whether the NRSC maintained similar information about the groups at issue in this case, but it is reasonable to assume that it did, based

on the sample profile and the statement that the NRSC has knowledge about what groups have done in previous years.

The Manual also contains a section entitled "Gathering and Building Lists" that discusses the importance to campaigns of gathering or otherwise gaining access to coalitions' membership lists. Attachment 2 at 16. As an illustration of the usefulness of such an exercise, the Manual notes that the NRSC increased the size of lists of issue-oriented groups in 1990 so that the groups and the NRSC could "effect (sic) the outcome of the election." An addendum referenced in the Manual, but not appended to the copy that this Office obtained, also contained samples of direct voter contact literature prepared by various interest groups. See Attachment 2 at 2.

This Office believes that the Manual is significant in that it shows the extent of information the NRSC had in its possession about the types of groups at issue in this matter and illustrates how groups can be used to target and motivate voters likely to vote for Republican candidates. In essence, the Manual encourages campaigns to do what the NRSC appears to have done in this matter: use its knowledge of and ties to existing, sympathetic "coalitions groups" and their constituencies to help turn out voters to support Republican candidates. In this case, however, the NRSC also gave the groups the funds to do so.

## **2. 1992 Activity**

In 1992, Senator Phil Gramm was Chairman of the NRSC, Jeb Hensarling was NRSC's executive director, Paul Curcio its Political Director, and Curt Anderson its Southern Regional Director. As noted above, Anderson had previously served as NRSC Coalitions Director during the 1990 election cycle but that position was phased out when Senator Gramm assumed the NRSC's chairmanship.

As Southern Regional Director, Anderson was the primary contact between the NRSC and the Senate campaigns in a specific geographic area that included North Carolina, South Carolina, Wisconsin, Kentucky, Florida, and Maryland.<sup>9</sup> Anderson's primary function as a regional field director was to help the campaigns win elections. His duties included fundraising and planning. *See* Curt Anderson at 31-35. Anderson also testified that generally he would discuss GOTV with campaigns he worked with, including how to target specific constituencies. *See* Curt Anderson at 59-61.

i) American Defense Foundation

On October 2, 1997, NRSC made a \$250,000 payment to ADF. Calendars produced by Mike McDaniel, ADF's Executive Director, and testimony provided by him, showed that this payment followed at least six scheduled meetings with the NRSC beginning in February 1992. The majority of these meetings were with or included Anderson, two of the meetings were with Curcio and Hensarling and one included Chairman Gramm.

McDaniel testified that in these meetings, as well as in phone calls, Curt Anderson, a personal friend, provided feedback to ADF on its attempt to seek funding from the NRSC for ADF's Military Voter Program ("MVP"). The MVP was a program which ADF, and its related 501(c)(3) organization, American Defense Institute, had operated in prior years to encourage military members to vote.

By May 1992, ADF had hired John Grotta as a consultant to help it seek funding for the MVP and, after funding was received, to help ADF prepare a mailing to military members. Grotta, a specialist in direct voter contact programs, had been the NRSC's Director of Voter

<sup>9</sup>

Anderson testified that Georgia was not one of his assigned states.

Contact Services in 1991, at the same time Curt Anderson served as NRSC's Coalitions Director. Grotta's specialty, then and now, is targeting persuasion mail and phone calls to Republican voters. The effectiveness of the targeted activities depends in large part on developing lists containing as much information as possible about a prospective voter, such as their address and phone number, the legislative or congressional district in which they live, their party affiliation, voter history, income, and even their positions on certain issues. In 1992, Grotta had just started a full-time consulting business devoted to list development and targeted mailing and phone programs.

Armed with a comprehensive written proposal Grotta had helped them prepare, ADF officials met with Anderson, Political Director Paul Curcio, Executive Director Jeb Hensarling in June 29, 1992 at the NRSC to seek funding for the MVP. During the meeting, ADF explained the MVP and presented the NRSC with a copy of the proposal described above. The proposal outlined various components of the MVP including a mailing to military members containing a candidate questionnaire and federal registration and absentee ballot materials, military base visits to encourage military personnel to vote, and video and print Public Service Announcements to be placed in military newspapers in the media. The proposal contained a list of 25 states in which ADF proposed to conduct GOTV activities at a cost of \$743,535, the majority of which was for the mailings. According to McDaniel, the component of the program that seemed to particularly interest the NRSC was the mailing. McDaniel at 229.

According to McDaniel, the NRSC did not make a firm commitment to give ADF funds at the June 29 meeting and, therefore, ADF continued to refine its proposal with input from Anderson. ADF again met with the NRSC on September 25, this time with Chairman Gramm to discuss the impact of the MVP. Curt Anderson may also have attended this meeting. McDaniel

at 137-141. According to McDaniel, Chairman Gramm had some type of written description of the program at the meeting and ADF discussed with Gramm the upcoming Senate elections. McDaniel at 140-141.

In preparation for Gramm's 1992 September meeting with ADF, Paul Curcio prepared a memorandum briefing Gramm on the meeting with ADF. Attachment 3. Curcio states that he does not remember writing the memo but does not deny that he did. Curcio at 194-195. The memo briefly describes the MVP, using language and statistics contained in ADF's written proposal, and states that "[t]his program is unique in that it provides a way for us to use our surplus of corporate dollars to have a direct impact on Senate races." It further states that "[v]irtually every campaign that we are involved with has asked one of us what the NRSC is planning to do in order to motivate and turn out the military vote."<sup>10</sup>

The Curcio memo further references two facts that can be used to motivate the military vote for Republican candidates: the targeting of "huge cuts" in the defense budget by Democrats and the Democratic opposition to the Gulf War made "in virtual lockstep." The memo notes that "[b]oth of these facts can be used to turn out the military vote for Republican candidates. Properly executed, this program will make them understand their very careers and the future of their families are at stake."

The memo goes on to note that ADF's program was designed to target states with a concentration of military personnel and notes six "key states in which the NRSC has targeted U.S. Senate races, and in which this program could make the difference." Targeted states

---

<sup>10</sup> When questioned about the memo, Curcio said he did not remember any campaigns asking the NRSC what they plan to do to turn out the military vote and commented that his statement to the contrary in the memo "doesn't even strike me as right, either frankly."

identified in Curcio's memo were North Carolina, South Carolina, Idaho, Wisconsin, Georgia and Indiana. Curcio's memo estimates the cost for a program aimed at the six targeted states to be \$231,624. Curcio ends the memo by recommending funding the program with what he identified as "at least several hundred thousand dollars in savings within the corporate budget (state party transfer money)."

According to McDaniel, the NRSC did not give ADF a firm commitment for funding at the September 25, 1992 meeting and he continued to call the NRSC to urge them to make a decision. About a week after the Gramm meeting, Anderson phoned McDaniel to tell him that the NRSC had decided to make a payment to ADF. McDaniel picked up the \$250,000 check that same day.

Immediately after receiving NRSC's check, and with Grotta's assistance, ADF finalized a candidate questionnaire that it faxed with a cover letter, on October 7, to Democratic and Republican Senate candidates in four of the six states referenced in the Curcio memo as "key": North Carolina, South Carolina, Wisconsin and Idaho plus Oregon and Ohio. The questionnaire contained eight questions about candidates' positions on various defense-related issues. Two of the questions concerned the very issues Curcio discussed in his memo as issues likely to turn out the vote for Republican candidates. ADF included the questionnaires in a mailing it sent to about 190,000 military personnel with homes of record in those states. The questionnaires contained responses from only the Republican Senate candidates in the targeted six states with a statement that the Democratic candidates did not respond.<sup>11</sup>

---

<sup>11</sup> The completed questionnaire was typeset and included a ruled off section at the bottom noting, in block letters, the name of the respective Democratic Senate candidate and the phrase "DID NOT RESPOND." In addition to the questionnaire, the mailing included a cover letter to military personnel

When asked in his deposition why ADF focused on those particular six states, McDaniel eventually replied, "They were races that the Senatorial Committee were (sic) interested in," then quickly added, "[b]ut our interest was in getting military members to vote." McDaniel at 162.

John Grotta served as ADF's consultant for the mailing to military members. At the same time he was coordinating ADF's mailing, Grotta was working as a direct voter contact consultant for, or on behalf of, Republican Senate candidates in three of the six races targeted in ADF's mailing. *See* Grotta at 41-42. As a consultant for the Packwood campaign in Oregon, Grotta designed and produced Packwood's advocacy mail and phone program aimed at turning out Packwood voters. Grotta also produced advocacy mail and conducted voter identification phone programs for Dirk Kempthorne's campaign in Idaho and produced two advocacy mailings for Tommy Hartnett in South Carolina. Moreover, Grotta had also been hired by the NRSC to build voter files to be used by the Republican party committees in Idaho and Oregon elections. *See* Grotta at 41-44. It appears from documents Grotta produced that he used those files to target the advocacy mailings and phone in the Oregon and Idaho Senate races.

In addition to coordinating the mailing, McDaniel testified that John Grotta also had input into the particular states that ADF would focus on in the mailing and made recommendations about the issues to be used in ADF's candidate questionnaire. *See* McDaniel at 124, 149, 163. Grotta testified that he had no role in composing the questions, but instead, said he designed the format of the mailing, edited the cover letter and coordinated the printing and mailing of the piece. *See* Grotta at 55.

---

from Red McDaniel urging them to vote and a one-page flier containing information about where military personnel could obtain information on how to vote.



Grotta testified he did not recall sharing any information with the Republican candidates about ADF's mailing. However, he further testified that he spoke with Curt Anderson, a personal friend, fairly frequently and said he "assumed" he spoke with Anderson about ADF's mailing "because he [was] the coalitions director" and "military voters are part of a coalition, I would think." Grotta at 72-73. Grotta stressed, however, that because his work with ADF was so long ago, he had "no recollection of specific conversations" with Anderson. *Id.* at 72.

Grotta's simultaneous work for ADF, NRSC and Republican Senate campaigns, and his conversations with Anderson, who, as discussed below, was actively working on some of the same ADF-targeted Senate campaigns, greatly increases the likelihood that the NRSC and the campaigns were aware of ADF's specific activities. Although current evidence indicates that Grotta used a computer list of military personnel obtained via a Department of Defense FOIA request for ADF's mailing,<sup>12</sup> the documents produced by Grotta show he had access to a voter database that would have permitted him to target Republican voters or voters in a certain geographic area with a history of voting Republican.

At the same time Curt Anderson was meeting with McDaniel and helping secure NRSC funding for ADF, Anderson was working on three of the Senate races targeted by ADF in his role as NRSC field director. Indeed, Anderson testified that, as the general election drew near, he was actively involved in the North Carolina and South Carolina races, and to a lesser extent, in the Wisconsin Senate races. *See* Curt Anderson at 51. He testified that he spoke with Kasten (WI) campaign manager Paul Wellday, about that campaign's status, strategy and message and

---

<sup>12</sup> Although there is a discrepancy between the mailing universe Grotta estimated would be available for ADF's mailing, 280,000, and the number of pieces ADF mailed, 90,000, Grotta testified that he was not sure the 280,000 was an accurate final number.

about what the NRSC could do to help. Anderson characterized that campaign as "desperate." *See* Curt Anderson at 52-54. With respect to the Faircloth campaign, Anderson stated that he spoke with Faircloth primarily about fundraising and NRSC's coordinated expenditures and with Faircloth campaign manager, John Preyer, about the status of the campaign, its message and what the NRSC could do to help. He also stated that he spoke with the campaign's general consultant, Carter Wrenn, primarily about strategy for the campaign's message. Anderson asserted that he does not specifically recall discussing GOTV plans with the Faircloth campaign, but testified he knew "that was important to them." Curt Anderson at 58-59.

Based on the evidence, Anderson appears to have been most involved with the Hartnett campaign (SC). Anderson testified that raising money was a problem for the campaign. *See* Curt Anderson at 67-68. He also testified that he worked closely with the state party in trying to accomplish a "very comprehensive get out the vote effort," had contacts with the Hartnett campaign Finance Director about fundraising, and had some role in state party mailings advocating Hartnett's election. These mailings were produced by Grotta and included discussions about which populations to target. *See* Curt Anderson at 65-69; 148-156.<sup>13</sup> Anderson testified that he did not recall specific conversations with these campaigns about ADF's questionnaire. *See* Curt Anderson at 147-149.

---

<sup>13</sup> Disclosure reports filed by the Hartnett campaign show a \$4,000 payment to Anderson in March 1993 for campaign management. However, Anderson denied under oath that he acted as Hartnett's campaign manager and testified that he did not recall specifically what the payment was for, "but I had gone out as a consultant on my own and was giving them some sort of advice, I assume." During this line of questioning, one of Anderson's three attorneys advised him to "just take your time, take a look at the date." Curt Anderson at 157-159.

In addition to Anderson's involvement in the North Carolina, South Carolina and Wisconsin races, Curcio testified that he had numerous contacts with Bob Packwood's Oregon campaign. These interactions included numerous conversations with Packwood's campaign manager, periodic conversations with the campaign's advertising consultant, and discussions with the campaign's pollster. *See* Curcio 163-164, 169-170. According to Curcio, most of these conversations concerned ads and advertising strategy which is perhaps reflective of Curcio's background in advertising prior to joining the NRSC. Curcio at 163-164. Curcio also had contacts with the Dick Kempthorne's Idaho campaign, including conversations with Grotta about the campaign's mail and phone programs, the campaign manager, and a conversation with the campaign's general consultant. *See* Curcio at 172-174. NRSC field representatives Mike Hudome and David Wardrop worked on the Republican Senate campaigns in Idaho and Ohio, respectively. Curcio at 158; 162-163, 172-174. NRSC also met its full coordinated expenditure limit in each of the six ADF-targeted races, reaching its limit in three by the end of September (North Carolina, South Carolina and Idaho) and in two by October 26 (Ohio and Wisconsin).

A critical factor underlying NRSC's choice of ADF as a benefactor is the NRSC's view that ADF's constituency, military voters, would likely favor Republican candidates. Anderson acknowledged that view in his deposition. When asked whether the NRSC had discussed which candidates military voters might favor, Anderson testified that the view of the Republican party, based on his experience at the NRSC, is that the party has a "better shot at appealing to them." Curt Anderson at 265.

The Curcio memo, Anderson's remark, and McDaniel's testimony about why ADF targeted the six states, all establish that NRSC knew and intended its \$250,000 non-federal payment to ADF to influence the election of Republican candidates in certain targeted states.

Even without that evidence, a strong inference of NRSC's knowledge and intent can be drawn from the facts that the NRSC had exhausted its coordinated expenditure limitation for its candidates in most of the ADF targeted races, that at least some of those campaigns were experiencing fundraising problems or otherwise faltering, and that five of the six ADF-targeted races were ones in which either Grotta or Anderson or both were working with the Republican Senate candidates. Anderson, who was working closely on the Wisconsin, South Carolina and North Carolina Republican Senate campaigns, met and spoke frequently with Mike McDaniel and Grotta acknowledges he spoke regularly with Anderson, possibly even about the ADF mailing. Moreover, Grotta was developing voter files for the NRSC while simultaneously working for ADF and working with Republican Senate campaigns in Oregon, Idaho and South Carolina.

Not only did the NRSC intend and know how its non-federal funds would be expended, but it did so with knowledge of the plans, projects and needs of the very campaigns benefiting from these expenditures. The Curcio memo plainly shows that the NRSC's interest in the ADF's MVP stemmed, in part, from questions by the Senate campaigns about what the NRSC planned to do to motivate military voters. Moreover, Anderson had regular contact with campaigns in three of the targeted races and other NRSC employees regularly communicated with campaigns in the three other states. Based on this knowledge of the campaigns plans, projects and needs, the NRSC's non-federal payments also constitute coordinated expenditures.

ii) National Right to Life Committee

Following a series of scheduled meetings between high ranking NRSC and NRLC personnel conducted between February and June of the election year, the NRSC made two

payments to the NRLC in October 1992 totaling \$40,000. As with the other October 1992 NRSC payments, internal NRSC documents show that Curt Anderson requested that these checks be issued.

According to the available evidence, there were approximately five scheduled meetings principally between the NRLC's Executive Director David O'Steen and Curt Anderson. *See* 1992 O'Steen calendar. Other NRLC employees also attended some of these meetings, including NRLC Associate Executive Director, Darla St. Martin. *See* O'Steen Affidavit dated 9/29/95 at 2(b) and O'Steen at 27-32. Although O'Steen testified that he had meetings in 1992 with Paul Curcio and Jeb Hensarling, neither Curcio or Hensarling remember meeting with him. *See* O'Steen at 28.

None of the deponents recalled much about the substance of any of these meetings. O'Steen testified that he believes most of them were meetings where he sought contributions for NRLC.<sup>14</sup> *See* O'Steen at 31. O'Steen also recalls general discussions with the NRSC about such things as who NRLC believed to be good candidates that deserved support, the advantages of a candidate being pro-life, past successes of pro-life candidates and whether "we think we are going to either take the Senate or not take the Senate or we need to win four or five seats." O'Steen at 39-40.

Moreover, there is no question that the NRSC was aware of the type of activity the NRLC historically conducted, including voter turn out calls. *See* Curcio at 72-76 and Curt Anderson at 193-195. In fact, although he could not remember meeting with the NRLC in 1992,

---

<sup>14</sup> It also appears that on at least one occasion, the conversations may have proceeded beyond such general discussions. On 1/30/92 Curt Anderson met with O'Steen and several other individuals associated with the NRLC. An internal NRLC memorandum memorializing the meeting suggests that on at least this occasion, the discussion focused on specific races. *See* St. Martin at 49-52.

Paul Curcio testified that the 1992 NRLC payment was for voter turnout. *See* Curcio at 74. As Curcio further noted, although more pro-life voters are nominally Democrats, "on that particular issue, our presumption was higher turnout is - helps the party, helps us." Curcio at 76.

A significant fact to bear in mind is that the NRSC's knowledge of NRLC's activities was not formed only from the types of meetings described above. NRLC officials involved in such meetings with the NRSC oversee and periodically are paid by NRLC's separate segregated fund -- the National Right to Life Committee Political Action Committee ("NRL PAC"). In that role, these same NRLC officials attended PAC briefings and had regular contacts with Republican Party Committees, including the NRSC, attended candidate fundraisers, received solicitations for contributions and were approached by the parties seeking NRLC's support for specific candidates. *See* Long at 31-33. Thus, from such contacts, the NRSC would have a good idea about which candidates the NRLC supported. Moreover, the same NRLC officials meeting with the NRSC and others about specific candidate support also made decisions about where NRLC would make the type of non-express advocacy GOTV phone calls they conducted here.

As noted earlier, a key to effective voter turnout is the ability to target favorable voters. O'Steen's calendar reflects, and O'Steen testified about, a meeting he had with Curt Anderson, Republican direct mail consultant John Grotta and Ernie Ohlthoff, an NRLC employee with knowledge concerning the various mailing lists available to the NRLC. *See* O'Steen at 47-52. Although O'Steen testified he viewed the purpose of the meeting as one in which he solicited contributions, Grotta's presence suggests otherwise. Grotta was no longer employed by the NRSC and had started his business specializing in direct voter contact. Thus, the identity of the participants strongly suggests discussion of the NRLC's direct mail capabilities. Indeed, the

NRLC had then and now a comprehensive voter identification program that permits it to identify a voter's party affiliation, as well as those voters who are for or against abortion.

Subsequent to the NRSC's October payments to NRLC, the NRLC conducted voter turnout calls in 9 states for the general election. Although the calls mentioned Presidential candidates only, any turnout would also have benefited any Senate elections in those states.

iii) Coalitions for America

On October 20, 1992, NRSC made a \$50,000 non-federal payment to Coalitions for America. As with the October payment to ADF, documents produced by the NRSC included a memo written by Anderson requesting that the check be issued.

On October 21, 1992, CFA sent a \$25,000 check to the National Right to Work Committee. Based on a review of documents produced by NRTWC, it appears that about the time it received CFA's check, NRTWC added a mailing to be sent to its members concerning the Wisconsin Senate race to its production of five similar mailings discussing candidates in other Senate races.<sup>15</sup> Wisconsin was one of Curt Anderson's assigned states and one of the races that he states he was particularly focused on as the general election drew closer. NRTWC's mailing discusses the two candidates in the Wisconsin Senate race. It portrays the Democratic candidate as hostile to right-to-work legislation and his Republican opponent as being "generally in favor" of right-to-work laws. A candidate issue survey concerning various Wisconsin federal candidates' positions on right to work issues was included in the mailing showing responses from only the Republican candidates.<sup>16</sup>

---

<sup>15</sup> Documents showing when the NRTWC began production on the Wisconsin mailing were not produced until November 21, two months after Licht's deposition and after expiration of the five year statute of limitations relating to the NRTWC's 1992 activities.

<sup>16</sup> During the same pre-election period the NRTWC also purchased print advertisements concerning Senate candidates and sent out copies of these ads in mailings to its supporters in several states.

Paul Curcio testified that the payments to CFA were for voter turnout, but was unable to recall the specifics of the payments. *See* Curcio at 220.<sup>17</sup> Anderson, who ran CFA at some point in the mid-80s and knew Licht from that time-period, testified that Licht seemed to always be approaching him for contributions. Anderson testified, however, that he did not recall what Licht ever stated that he needed the money for and he could not recall his role in NRSC's October payment to CFA. *See* Anderson at 170-178. He did not recall a "specific conversation" with Licht about the 1992 elections. Anderson at 177. Anderson also acknowledged he was familiar with NRTWC and its president Reed Larson, in part, because NRTWC members had attended CFA meetings of "like-minded" groups when he ran that organization. Anderson at 177-178. When asked if NRTWC ever approached him for contributions, Anderson replied, "I don't recall it." Anderson at 179.

At his deposition, CFA President Eric Licht testified that the NRSC payments were not made for specific purposes beyond the statement in NRSC's cover letter that they were to be used for "good government activities under the charter," and not for elections. Licht at 45. He stated, "I could use it for whatever I desired." *Id.* at 46.

Mr. Licht was also asked about the CFA payments to the NRTWC in 1992. He testified that no one from the NRTWC approached him for funds; that he had thought that "they are a good organization and do good work," that with regard to the \$25,000 payment there was nothing particular about October 20 except that he had money available; that he did not remember a cover letter being sent with the \$25,000 CFA check; that he did not remember any telephone conversations with an NRTWC representative about use of the funds; and that he did not ask for any kind of feedback about that use. *See* Licht at 52-55. "I may have told them that I'm sending them a check for \$35,000, but there was no discussion of how this money was to be used. Because, as I said, the organization uses the money as they wish. I didn't tell them how to

---

<sup>17</sup> In 1990 the NRSC made grants to CFA totaling \$180,000. At his deposition, Mr. Licht was asked whether he remembered these grants and testified, "Possible. I mean, I just don't, I don't have an exact recollection of months and years." Licht at 38.



use the money.” Licht at 79. When asked if he later requested follow-up information as to how the funds had been used, Mr. Licht said, “No, I don’t know.” *Id.*

Curcio’s recollection that the NRSC’s payment to CFA was for voter turnout, together with the immediate transfer of half of those funds to the NRTWC to be used for a mailing to its members concerning candidates in the Wisconsin Senate races, supports a strong inference that the NRSC made the October 1992 non-federal payment to CFA with the knowledge and intent that it would be used to influence the election of Wisconsin candidate Bob Kasten. This inference is further strengthened by Anderson’s testimony that the Republican race in Wisconsin was “desperate” and the fact that the NRSC had exhausted its coordinated expenditure limit five days after making the non-federal payment to CFA. The failed recollections of Anderson and Licht do not obviate that inference.

Further, the NRSC made the non-federal payment to CFA with knowledge of the plans, projects and needs of the very campaign ultimately benefiting from its expenditure. As noted above, Curt Anderson had discussions with Kasten’s campaign manager about the campaigns’ strategy and message and what the NRSC could do to help.

### **3. 1992 Georgia Run-off Activity**

At the conclusion of the 1992 general election, the U.S. Senate seat in Georgia remained open since none of the candidates had received a majority of the vote as required under Georgia law. Thus, a run-off between the two highest vote-getters, incumbent Senator Wyche Fowler and Republican candidate Paul Coverdell, was scheduled for November 24, 1992.

The NRSC had exhausted its coordinated expenditure limit for the Georgia Senate race during the general election and each candidate and his party had only three weeks to raise funds and motivate their voters before the run-off. Consequently, the NRSC marshaled its resources to raise funds and otherwise assist the Coverdell campaign. The importance of the Georgia race to the Republican party generally, and to the NRSC in particular is evident from the fact that NRSC Chairman Phil Gramm, Executive Director Jeb Hensarling, Political Director Paul Curcio and various other NRSC staff members all spent time in Georgia working for the Coverdell campaign. *See* Hensarling at 80-88 and Curcio at 227-253.

Paul Curcio testified that he spent between 7-10 days at Coverdell's Georgia campaign headquarters during the run-off period, including the week before the election. According to Curcio, his focus was principally on the campaign's media advertising so his primary contact was with Coverdell's campaign manager and advertising consultant. Curcio also frequently met with Senator Coverdell although his testimony about what they spoke about was very general. Curcio also had contacts with the campaign's pollster and testified that discussions occurred about how Coverdell was doing among pro-life and pro-choice voters. *See* Curcio at 227-253.

David Carney, who had just finished working on the Bush/Quayle presidential campaign, also traveled to Georgia for the Georgia run-off on behalf of the RNC. Carney at 232-242. Carney testified that the state and national party operated a "pretty big turnout" program aimed at

turning out the Republican base. Carney at 235. He also stated that he was involved in discussions about voter turnout and says he spoke to Curcio everyday during the run-off period. See Carney at 234-235. Curcio testified that he does not recall discussing GOTV plans with anyone at the campaign or at the RNC. Although Curcio acknowledged GOTV was very critical for the run-off, he reiterated that his focus was on media strategy. See Curcio at 242-243.

In addition to marshaling its key officials to assist the Coverdell campaign in its own fundraising efforts, the NRSC also sought an advisory opinion from the Commission on November 6, 1992, seeking guidance on whether the NRSC could make additional coordinated expenditures for the Georgia run-off. While waiting for the Commission to issue an advisory opinion, the NRSC made an additional \$122,000 in non-federal payments to the three main recipient groups and an Alabama state political committee. The specific amounts and dates of NRSC's payments were: \$30,000 to ADF on November 10, 1992, \$40,000 to CFA on November 11, 1992, \$45,000 to the NRLC on November 17, 1992 and \$7,000 on November 18, 1992 to the Good Government Committee, an Alabama state political committee with ties to Emory Folmar, Montgomery, Alabama mayor and former chairman of the Alabama Republican Party.

Immediately after receiving NRSC's funds, the NRLC and ADF undertook activities aimed at turning out military members and pro-life supporters for the Georgia run-off. Additionally both NRLC and CFA used some of the funds to make contributions to the Christian Coalition, its state affiliate the Georgia Christian Coalition, and the NRTWC. All three of the latter groups were also actively involved in motivating supporters to turn out for the Georgia run-off.

A discussion of the limited testimony relating to each of November payments to ADF, NRLC and CFA follows. An analysis of the entire series of November payments follows at the end of the CFA discussion.

i) American Defense Foundation

NRSC made a payment of \$30,000 to the ADF on November 10, 1992, just prior to the Georgia run-off. Mike McDaniel testified that the \$30,000 check was for a military voter program for the Georgia run-off election. McDaniel at 202-206. However, McDaniel, Isaf, Anderson and Curcio all testified that they did not recall any meetings leading up to the payment or how it came about, although as Isaf candidly noted, he presumed discussions or meetings occurred "because they [NRSC] didn't send us a check out of the blue."<sup>18</sup> Isaf at 152. When asked whether ADF decided to conduct MVP activities for the Georgia run-off at the request or suggestion of the NRSC, McDaniel stated that he did not remember, and Isaf testified that he was not "specifically aware" of any such request. See McDaniel at 202-206; Isaf at 157.

Approximately at this time, Curt Anderson's brother, Wes, began working for ADI. Wes had just completed his role with a Nebraska Congressional race and, according to his testimony, Curt suggested he approach Red McDaniel for temporary work while looking for another job.<sup>19</sup> The Anderson and McDaniel families were fairly well acquainted; Curt had "dealt with them as well on a number of projects" and suggested to Wes that "they could give me a small income while I was looking for another job." Wes Anderson at 13. Wes' work for ADI included some

---

<sup>18</sup> After remarking NRSC would not just send a check out of the blue, Isaf made a telling remark: "I wish, you know, they could have done that."

<sup>19</sup> Interestingly, Wes Anderson interviewed with the NRSC, NRCC and RNC during his temporary stint at ADF.

groundwork for the MVP activities aimed at the Georgia run-off as well as work on other ADI programs.

Wes testified that he did not talk to Curt about NRSC's contributions or the Military Voter Program except well before Wes began his stint at ADF. This was at the same time that Curt was NRSC Coalitions Director. According to Wes, Curt would have mentioned the MVP while he and Wes were talking shop since the MVP was part of Curt's coalitions work. *See* Wes Anderson at 30-31.

Isaf testified that ADF's MVP activities for the Georgia run-off included the production and airing of a radio ad which was broadcast on Georgia radio stations in which ADF President Eugene "Red" McDaniel urged military personnel to vote in the run-off, and a military base tour in which McDaniel traveled to a number of bases to encourage military participation in the election. *See* Isaf at 158-159. A mailing to Georgia military personnel was apparently also planned but abandoned. According to ADF's interrogatory responses, the mailing was canceled due to time constraints. Isaf testified that he thought they ended up not doing the mailing because radio ads "ate up" too much of the money. Isaf at 159-160.

ii) National Right to Life Committee

While waiting for the Commission to respond to its advisory opinion request regarding an additional coordinated expenditure limit, NRSC transferred an additional \$45,000 to the NRLC on November 17, 1992, less than a week before the Georgia run-off.

NRLC used part of NRSC's funds to finance GOTV phone calls for the run-off election using lists owned by the NRLC and the Georgia Right to Life Committee at a cost of \$17,372.75. O'Steen at 89-90 and NRLC 4/97 & 5/97 Interrogatory Responses. The calls, made to pro-life

supporters, contained a message noting Coverdell's support for pro-life issues and his opponent's opposite stance.

Another portion of the funds, \$25,000, was used to make contributions to the Christian Coalition and the Georgia Christian Coalition. *See* O'Steen at 75. Both the Christian Coalition and the state affiliate had been heavily involved in the Georgia general election, distributing voter guides and conducting get-out-the-vote calls.

When questioned about the November 1992 NRSC contribution, NRLC President David O'Steen responded that he had received a phone call from the NRSC stating that they would be making a contribution to the NRLC. O'Steen testified that during the call, a discussion occurred about whether the NRLC would make contributions to the Christian Coalition. O'Steen says he responded in some way but testified that he could not recall how, who the caller was or when the call took place.<sup>20</sup> *See* O'Steen at 69-74. Later, O'Steen testified that he understood the unidentified NRSC caller to be asking whether NRLC might ever make a contribution to the Christian Coalition. *See* O'Steen at 95.

O'Steen first testified that he did not remember being solicited for a contribution from either the Christian Coalition or the Georgia Christian Coalition. *See* O'Steen at 78-79. Later, however, O'Steen recalled that after the NRSC's phone call, he had a phone conversation with Ralph Reed. *See* O'Steen at 95. During the call, Reed suggested that the NRLC make a contribution to the Georgia Christian Coalition, and some discussion occurred about making contributions to both Christian Coalition and the Georgia Christian Coalition. O'Steen testified that he could not remember further specifics about the phone conversation with Reed, but that

---

<sup>20</sup> During his testimony about the November contribution, O'Steen requested to speak to his attorney. *See* O'Steen at 68.

thereafter NRLC made the contributions to the Christian Coalition organizations. *See* O'Steen at 95-98. O'Steen testified that he did not recall whether he and Reed discussed the Georgia run-off or the fact that NRLC had received or would receive a contribution from the NRSC. *See Id.*

The NRLC's support of Coverdell appears to have been last-minute. Disclosure reports filed by NRL PAC, NRLC's separate segregated fund, show no support for Coverdell prior to the run-off, even though Coverdell had faced the same opponent in the general election three weeks earlier. NRL PAC's reports for the run-off, however, reflect a \$2,500 contribution to Coverdell and \$15,330 in independent expenditures for radio ads supporting him.

iii) CFA

Like the payments to ADF and NRLC, NRSC made a second non-federal payment to CFA on November 11 in the amount of \$40,000. And once again, the day after receiving the payment, CFA transferred \$35,000 to NRTWC. Upon receipt of this second CFA payment, NRTWC sent two separate mailings to its supporters concerning the candidates in the Georgia Senate run-off. Both mailings portrayed the Democratic candidate, Wyche Fowler, as a friend of "Big Labor" and his opponent, Paul Coverdell, as having a 100% commitment to the "Right to Work." Both mailings apparently contained a survey on right to work issues reflecting all positive responses from Coverdell and no responses for Fowler.

Eric Licht's testimony about the November NRSC payment to CFA was similar to his testimony about the October 1992 payment. Licht did not recall the specifics of the November contribution and testified that he did not remember any discussions with Curcio or Anderson about possible contributions to NRTWC or about the Georgia run-off. *See* Licht at 73-77. He denied discussing the Georgia Senate run-off with anyone at the NRTWC. *See* Licht at 81. Similarly, Curt Anderson stated that he did not know what prompted NRSC's November payment to CFA and did not recall anyone at CFA requesting a contribution in November. Anderson at 187-188.

iv) Analysis of Georgia Run-off Evidence

The timing of NRSC's non-federal payments, the exhaustion of the NRSC's coordinated expenditure limit for the run-off, the importance of Republican turnout for the run-off, and the fact that the payments were made to three groups who used those funds for communications aimed at turning out supporters likely to support Coverdell or further transferred NRSC's funds to other groups who did, all are facts which support a strong inference that the NRSC made the non-federal payments to the recipients to influence the election of Paul Coverdell in the Georgia run-off.

Additionally, as described above, the NRSC had first-hand knowledge of the Coverdell campaign's plans, projects and needs. NRSC's Chairman, Executive and Political Director all traveled to Georgia during the run-off and, as evidenced by Curcio's testimony, were closely involved in media strategy and polling efforts to assess Coverdell's strengths and weaknesses on the abortion issue. Moreover, even though Curcio states that he does not recall discussing GOTV activities, he was in daily contact with the RNC and other party staffers who were working in Georgia at the same time on that very issue. Thus, NRSC's transfers from its non-federal account to these groups were made with knowledge about the Coverdell's campaigns plans, projects, and needs and thus constituted excessive coordinated expenditures.



#### **4. 1993 Texas Special and Run-off Elections**

The NRSC underwent some typical changes in key personnel at the end of the 1992 election cycle. Executive Director Jeb Hensarling returned to Texas and Curt Anderson left the NRSC and began his own consulting business. However, two key NRSC officials remained at the NRSC for the 1993-94 election cycle: NRSC Chairman Senator Phil Gramm and Political Director Paul Curcio. William "Bill" Harris and David Carney assumed the positions of NRSC Executive Director and Deputy Executive Director, respectively.

Both William Harris and David Carney testified that at the time they assumed their respective positions, the NRSC's debt was a serious concern.<sup>21</sup> See Carney at 40-41; Harris at 30. At the end of January 1993, NRSC reported a debt of \$5.8 million dollars and approximately \$340,000 cash on hand. Harris testified that the status of debt repayment was a topic of discussion in his frequent meetings with Senator Gramm. See Harris at 39. According to David Carney, the new NRSC management also put into place stringent cash management systems and he and Harris both made an effort to sign off on all non-payroll expenditures over a certain amount. See Carney at 43-44; Harris at 37-38. Carney testified that he thinks the NRSC held off making expenditures and hiring field staff because of the budget. See Carney at 50-51.

Around the same time, NRSC management was dealing with what they viewed as a serious debt situation, another unscheduled U.S. Senate election loomed on the horizon when Senator Lloyd Bentsen was nominated to be Secretary of the Treasury and vacated his newly-won Senate seat in Texas. Although Texas Governor Ann Richards appointed Robert Krueger to temporarily replace Bentsen, a special election to permanently fill the seat was scheduled for

---

<sup>21</sup> The NRSC's debt situation was probably due in some part to the atypical Georgia run-off.

May 1, 1993.

Both Carney and Harris testified that NRSC's debt raised concerns about the NRSC's ability to participate in the Texas race. *See* Carney at 63-64; Harris at 61-62. NRSC's participation, through the making of coordinated expenditures, would require a large unanticipated expenditure a year before it would have to make many others and it was not calculated for in the budget. Even so, Carney testified that the NRSC decided to spend up to the full coordinated limit "even if we had to borrow the money," because of the importance of the race: Texas is a big state and the home of then NRSC Chairman Gramm, it was considered an open seat, and Clinton was polling poorly in Texas, garnering only a 23% approval rating. *See* Carney at 63-64, 78-80.

Against this backdrop, NRSC made another significant payment to ADF on March 2, 1993 in the amount of \$170,000. McDaniel, Carney, and to a lesser degree, Isaf, acknowledged that the \$170,000 payment was to finance another ADF military voter program, this time aimed at military personnel with homes of record in Texas. *See* McDaniel at 230-231; Carney at 123-124; Isaf at 255-256. Curt Anderson testified that he remembered being part of a solicitation to the NRSC seeking funding so that ADF could conduct a voter turnout for the special election; however, he remembered no specifics about any meetings. *See* Curt Anderson at 242-244.

Around the time of the Texas special election, and presumably prior to NRSC's 1993 payment to ADF, David Carney met with ADF President Red McDaniel at the NRSC. *See* Carney at 108-118. During the meeting, Red McDaniel asked NRSC for a contribution and they discussed ADF's MVP. Carney stated that Red McDaniel explained how ADF worked with the Pentagon to get lists of military members and showed him samples of previous ADF mailings,

which included Senate-related candidate questionnaires and absentee ballot materials. *See* Carney at 148. Carney also stated that Red McDaniel discussed how the candidate questionnaire could be "updated for the '90s" to include questions about gays in the military, downsizing and "Clinton." *See* Carney at 115-118. When asked whether he offered any opinions on the issues McDaniel mentioned, Carney started to testify, "[w]e talked about what was going on in the --." At that point, Carney stopped and finished his sentence by stating: "I mean this is early on. But not specifically." Carney at 118. Carney testified that he may have passed ADF's contribution request on to Curcio and that he believes Red McDaniel may have also sent in a written proposal.<sup>22</sup>

Three of the issues mentioned by Red McDaniel in his meeting with Carney -- gays in the military, downsizing and "Clinton" -- appeared on the candidate questionnaire that ADF faxed to candidates in the Texas special election and eventually mailed to military members with homes of record in Texas. Perhaps even more significant, in view of Carney's testimony about Clinton's poor Texas polling numbers, is the fact that the 1993 questionnaire attempted to capitalize on Clinton's unpopularity in Texas by linking highly visible Clinton Administration/Democratic initiatives with positions likely to be viewed as unfavorable by military personnel, not unlike a push poll. For example, one question specifically associated a Clinton budget proposal with downsizing and salary cuts and freezes: "President Clinton has proposed a total of \$124 billion in defense cuts . . . Among the cuts will be a reduction in base force. . . a salary freeze and decreases in COLA for all military personnel." Another question

---

<sup>22</sup> John Isaf testified that he prepared an MVP proposal for the special election, with likely input from Anderson. A copy of the proposal produced by ADF stated that ADF's mailing would include a questionnaire, but contained no details about its contents.

suggested that national health care, a highly visible Clinton Administration policy, would result in discontinuation of veteran's benefits.<sup>23</sup>

Only the Texas Republican Senate candidates responded to ADF's candidate questionnaire and approximately 190,000 copies of the questionnaire were mailed to Texas military personnel and reserve officers, together with a motivational letter from Red McDaniel and federal military voter registration and absentee ballot request forms.

Several deponents were questioned about ADF documents evidencing NRSC's direct involvement and/or knowledge of ADF's Texas MVP activities: a fax log produced by ADF showing fax transmissions to an NRSC fax number hours before ADF began faxing the candidate questionnaire to Texas candidates, and copies of two ADF fax transmittal forms from Isaf to Curcio asking for Curcio's comments on a draft and a revision of the scripts for a video Public Service Announcement aimed at both the Texas special and run-off election.<sup>24</sup> With respect to the fax log, none of the deponents questioned about this, however, "specifically" recalled what ADF faxed the NRSC on that day or whether ADF sent a copy of the questionnaire to NRSC. With respect to the fax transmittal forms, Curcio responded in the strongest terms that he "absolutely" did not recall having seen the fax or the scripts before and pointed out that the

---

<sup>23</sup> The author(s) of the 1993 ADF Texas candidate questionnaire remain unclear. Mike McDaniel stated that he had no personal involvement in drafting the questionnaire and identified Isaf as the main drafter, with possible input from Anderson. See McDaniel at 231. Anderson stated that he probably had input into the questionnaire but did not specifically recall. See Anderson at 253. John Isaf initially testified that he did not think there was a questionnaire in the 1993 mailing, however when shown a copy, stated that it was put together by him, Mike McDaniel and Red McDaniel. He further stated that he doubted that Anderson was involved. See Isaf at 185.

<sup>24</sup> The video, a copy of which was provided by ADF early on, featured Red McDaniel urging military members to vote in the 1993 Texas special Senate election. Copies of the tape were distributed to TV stations near Texas military bases. Another version, presumably mentioning the run-off was apparently videotaped at the same time but not produced.

phone number (not the fax number) on the fax was not his direct line. *See* Curcio at 291-292.

Mike McDaniel testified that he did not know why ADF sent scripts to Curcio and when invited to speculate was advised not to by his counsel. He did state that ADF had to "go through somebody to be able to get it done. So he's [Curcio] probably the guy." *See* McDaniel at 249.

Later, he stated that "maybe" Curcio was the decisionmaker on "getting it filmed and making the decision on whether or not they would film it." McDaniel at 248-250. Isaf testified that the

"primary reason" he faxed the script to Curcio was so ADF could get use of the NRCC studios.

He also characterized his request for comments as an invitation for technical advice, i.e., whether the script was too short or long and whether the production capabilities existed to film it as scripted. He did not recall whether Curcio commented on the scripts. *See* Isaf at 204. Both Isaf

and McDaniel testified that the video PSAs were probably taped at the studios of the National Republican Congressional Committee ("NRCC") where ADF had taped other video PSAs in the past. Both also testified that, in the past, NRCC had produced video PSAs free of charge and

both were surprised when shown a copy of an NRCC invoice showing that ADF had been

charged for approximately half the costs of the Texas video production. *See* Isaf at 164, 212;

McDaniel at 195. According to McDaniel, Anderson had helped to arrange past taping at the

NRCC. Anderson did not specifically recall having done so for the Texas video, but stated that it was "possible." Curt Anderson at 269.

Since the Texas special election was essentially a primary involving three major Republican candidates, the NRSC was careful about not publicly supporting any candidates.

Both Harris and Carney testified that they met or had conversations with all three candidates prior to the May 1 election and provided them with any requested assistance. *See* Harris at 59; Carney at 65.

Since none of the candidates in the Texas special election won a majority of the vote, a June 5, 1993 run-off was scheduled between the two top voters, Republican Kay Bailey Hutchison and Democrat Bob Krueger. Carney testified that during the run-off, he was in Texas almost full time serving as the "man on the ground" and reported back to the NRSC on a daily basis. Carney at 80. In Texas, Carney worked primarily out of the state party's offices and with the Texas state party in assisting the Hutchison campaign effort. Carney also visited Hutchison's campaign offices; had multiple daily contact with Karl Rove, Hutchison's general consultant who advised the campaign on strategy and oversaw campaign operations; regularly and frequently spoke with David Beckwith, the campaign's chief spokesman; and spoke with Hutchison from time to time when she was not on the road. See Carney at 100-103. Harris also generally remembered conversations with various Hutchison campaign staffers, including the campaign chairman, Jim Francis, Charlie Black, an informal advisor to Hutchison, Rove, and Hutchison herself. See Harris at 128-132.

Harris and Carney both acknowledged the significance of voter turnout in special and run-off elections. See Harris at 125-126, Carney at 84. Further, Carney described voter turnout in Texas as expensive because the state has no party registration. Despite the importance of turnout, however, Carney stated that he did not think the Hutchison campaign had a plan to turn out its supporters or spend money on GOTV mail. Instead the campaign was focusing its resources on media. See Carney at 83, 90, 103. A review of NRSC's disclosure reports shows

this fact holds true for NRSC's own coordinated expenditures to Rove's firm, the bulk of which was spent on media, advertising and direct mail fundraising.<sup>25</sup>

Bill Harris testified that he was involved in ensuring that discussions were ongoing between Curcio and Carney about get-out-the-vote plans. *See* Harris at 125-126. Carney stated that he was sure the state party had a GOTV plan for the run-off election, but that he did not "specifically remember" discussing GOTV with anyone there even though he worked mostly out of the state party's offices during that time and worked with the state party "very closely." *See* Carney at 142.

The importance of turnout to the Texas run-off, Carney's testimony that voter turnout in Texas was expensive, the use of campaign funds and NRSC's own coordinated expenditures largely for media and fundraising, suggest a strong incentive for NRSC to look to another entity, such as ADF, to do get-out-the vote activities. Moreover, even though it appears from its disclosure reports that the Texas state party made expenditures for GOTV, its spending was necessarily limited by the availability of federal funds.

Very little affirmative testimony was elicited from deponents across the board regarding the circumstances under which the NRSC's \$40,000 pre-run-off payment was made to ADF. Mike McDaniel's calendars reflect two meetings with the NRSC prior to the making of the run-off payment on May 26, 1993: one on April 26 with Paul Curcio and one on May 14, with Curcio, Harris and Anderson at the NRSC. However, McDaniel, Anderson and Curcio all each testified that they do not recall any "specific" meetings prior to the run-off.<sup>26</sup> Similarly, although

---

<sup>25</sup> NRSC's describes its payments to Rove's firm as simply as for direct mail but Carney testified that Rove's firm did direct mail fundraising not GOTV. *See* Carney at 100-103.

Harris acknowledged that he remembered meeting Mike McDaniel at the NRSC, he testified that he could not remember when the meeting took place or what was discussed. *See Harris at 84-86.*

Despite this collective lack of memory, internal ADF documents show McDaniel sought reimbursement for travel expenses to the NRSC on the days indicated on his calendar.

Moreover, although no one remembered specific meetings, John Isaf testified that he prepared a written proposal seeking funding for MVP activities aimed at the run-off and made a presentation to the NRSC concerning their proposal. *See Isaf at 231 and 243.* The run-off proposal Isaf prepared detailed the MVP activities ADF conducted for the Texas special election and proposed undertaking run-off activities that would largely build on what was already done for the special election. Specifically, in the funding proposal, ADF stated that it would send a second mailing containing a candidate questionnaire with the original responses of two top vote-getters (only one of whom, Hutchison, responded), and distribute a video PSA for the run-off that documents show had already been produced. The proposal also noted that a Texas vendor would be used for the mailing to ensure quick delivery.

Mike McDaniel testified that the \$40,000 NRSC payment was for get-out-the vote activities aimed at the run-off election. With these funds, ADF in fact sent a second mailing to approximately 80,000 military personnel with homes of record in Texas, half the number of mailings ADF sent out for the special election. McDaniel's explanation for the smaller mailing was that it was budget-driven, but he could not explain how ADF selected the 80,000 names from the apparently larger list ADF had used for the first mailing. *See McDaniel at 262-263.*

ADF's smaller run-off mailing suggests it may have been narrowed to target those who voted in the special election. According to Carney, since so few voters turn out in special



elections, the focus is on turning out primary voters, or in the case of Texas, those who voted in the special election. Indeed, a computerized monthly planner produced by Harris shows that extensive data collection was planned to obtain names of special election voters, specific segments of whom were then to be targeted by GOTV mail and phone banks. Carney identified the planner as a GOTV plan for Texas that was very typical of a state party plan. *See* Carney at 84-90, 94.<sup>27</sup> When asked a similar question, whether he knew whether anyone provided ADF with the names of Texas special election voters, Anderson, after interruptions by two of his attorneys, replied, "no, I don't recall that." Anderson also testified that he did not "specifically recall" an ADF run-off mailing, though he assumed they had done one. He also testified that he did not know the mailing universe for either ADF's special or run-off mailings, other than it was sent to military voters in Texas. *See* Curt Anderson at 272-276.

ADF's use of Campaign Services Group ("CSG"), a Texas vendor, to do the run-off mailing suggests some involvement by Anderson in the run-off mailing. Both McDaniel and Isaf testified that they did not know how the vendor was chosen, but each stated that they probably used a Texas vendor so the mail would reach recipients faster. Campaign Services Group was one of the primary direct mail fundraising vendors used by the Hartnett campaign in 1992. Anderson acknowledged that he had interviewed vendors for the Hartnett campaign, chose CSG, and had had contact with a CSG principal. *See* Curt Anderson at 272-274.

In summary, the deponents' testimony about NRSC's budget concerns and its effect on NRSC's ability to make coordinated expenditures for the Texas election, NRSC's

---

<sup>27</sup> Harris identified the document as something the NRSC Political Division may have written. He found it on the hard drive of a computer he used while at the NRSC and stated that he had no idea how it came to be there.

acknowledgment that turnout is especially important in special elections, Carney's testimony that conducting voter turnout in Texas is expensive, and the fact that the state party's participation was limited by its need to rely on federal funds for any turnout operation together show a strong motive for the NRSC to turn to a non-party entity, like ADF, to conduct GOTV activities in Texas. Further, ADF's written proposal detailing its planned GOTV activities, Carney's testimony about his meeting with Red McDaniel and their discussions of issues that could be used in a candidate questionnaire, and the fact that ADF sought NRSC input into video PSA scripts, all show that the NRSC knew of ADF's intent to use these funds for GOTV activity for a specific Senate race. Finally, the NRSC officials' testimony concerning their heavy involvement and interaction with Republican Senate candidates' campaigns and the state party around the time of the Texas elections and the fact that, despite the particular importance of voter turnout, the resources of the campaigns, the NRSC and the state party were being devoted elsewhere or were limited, provide further evidence that the NRSC made the \$210,000 in payments to ADF based on the plans, projects and needs of the Texas Republican Senate candidates and, therefore, were coordinated expenditures.<sup>28</sup>

---

<sup>28</sup> Though evidence of coordination exists, it is unclear whether the payments of ADF funds caused the NRSC to exceed its coordinated expenditure limit for Texas. The total coordinated expenditure limit for Texas was \$1,432,562. Advisory Opinion 1993-2. Though the NRSC deponents testified that they believed NRSC had spent its full coordinated amount, according to FEC disclosure indices, NRSC spent only \$1,250,363.84. Disclosure indices of the state party reflect no coordinated expenditures. Thus, if the party committees reported correctly, it appears that \$182,198.16 of the special election coordinated expenditure limitation remained. However, the fact remains that the payments by the NRSC were made with non-federal funds and were improperly used to finance a federal election.

## 5. 1994 Activity

NRSC continued its pattern of making non-federal payments to non-profit organizations just prior to the elections in 1994. Between October 31 and November 24, 1994, the NRSC made \$175,000 in non-federal payments to the NRLC.<sup>29</sup> As noted in earlier General Counsel's Reports in this matter, former NRSC Chairman Phil Gramm remarked upon his decision to make these contributions to NRLC in a February 1995 luncheon with reporters. Gramm stated, "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election." (emphasis added). Washington Post, February 12, 1995 at A27. Gramm went on to say that the NRSC was particularly concerned about Senate elections in Minnesota and Pennsylvania. Senator Gramm later contacted the reporter and indicated that his original statement was incorrect and that the reason for the payments was that the NRLC's "message conformed to the Republican message." In an affidavit attached to the NRSC's response to the complaint in this matter, Senator Gramm states that after the luncheon, he "had a chance to review the facts and check the NRSC's records" and "realized that [his] off-the-cuff comments about NRSC's donations to the National Right to Life Committee had been incorrect."

In her deposition testimony, Carol Long testified that within the month before the election, she requested a contribution from NRSC Executive Director Bill Harris, specifically mentioning that NRLC was raising money for GOTV calls and wanted to make calls in Pennsylvania.<sup>30</sup> See Long at 36-37; 110; 117-120. According to Long, she called Harris and

---

<sup>29</sup> These payments were made on October 31, November 1, November 3, and November 4 (for \$50,000, \$50,000, \$60,000 and \$15,000, respectively).

<sup>30</sup> Long testified Harris was only one of the people she made calls to but couldn't remember if she specifically mentioned making GOTV calls in Pennsylvania to them. Long at 121.

others just after NRLC's Pennsylvania affiliate, Pennsylvania Pro-Life Foundation ("PPLF") agreed to let NRLC use its list to make the phone calls. Long at 121-122. Long also testified that she made a follow-up call to the NRSC after her conversation with Harris but could not remember who she had spoken to. Thereafter, the NRSC made its payments to NRLC.

Following the receipt of NRSC's payments, NRLC expended approximately \$63,000 for GOTV calls in the Pennsylvania senate race. These calls were made using PPLF's lists of supporters and contained a message that Republican Senate candidate Rick Santorum supported certain pro-life positions and urging the recipient of the call to vote in "Tuesday's" election.

On the day before it received the last of NRSC's non-federal payments, NRLC also made a \$50,000 payment to a telemarketing vendor conducting GOTV phone calls on behalf of NRLC's Minnesota affiliate, Minnesota Citizen's Concerned for Life, Inc. ("MCCL"). The next day, NRLC transferred another \$50,000 to MCCL. The check request form for the \$50,000 transfer to MCCL stated that it was for "special projects -- phone calls." Documents produced by MCCL and the vendor show that MCCL financed calls to pro-life voters in Minnesota using a script almost identical to the one used in Pennsylvania, except of course, using the names of the Minnesota Senate candidates. All of the MCCL-financed calls mentioned the Minnesota Senate candidates although some include references to other Minnesota federal and state candidates.

NRSC's non-federal payments to NRLC and NRLC's subsequent transfers to and on behalf of MCCL, were made after a meeting had occurred between MCCL representatives and NRSC Executive Director David Carney. In his deposition testimony, NRSC Deputy Executive Director Carney testified that he met with two women from MCCL, probably in October 1994, when he was in Minnesota working on the Grams campaign. As Carney describes it, during the meeting, one of the MCCL representatives told him they were going to try to turn out their

membership. She also spent most of her time telling him about MCCL, how it was well organized and that they were going to do all they could to turn out their membership. However, Carney noted that the woman "obviously had talked to her lawyer" because she kept saying she could not tell him anything "specific" or where they were calling. Carney also stated that they "actually never said they really supported Rod" but he admitted that Ann Wynia's pro-choice position was well known and stated "I just assumed they were supportive." Carney at 179-184.<sup>31</sup>

During the time the NRSC made these payments to the NRLC, Curt Anderson was working as Midwestern Field Director of the RNC and Minnesota was one of his assigned states. At the same time, he was also working as fundraising consultant with NRLC. In the course of questioning him about Anderson's 1994 work for the NRLC, NRLC Executive Director O'Steen stated that he believed Anderson had some responsibility for bringing in the NRSC payments. See O'Steen at 158-161. Anderson, however, testified that he does not recall if he solicited NRSC for contributions to the NRLC in 1994. Anderson at 216.

The NRSC's 1994 payments to NRLC were once again made in the weeks before the election in closely contested races targeted by the NRSC, beginning only six days after the NRSC had effectively exhausted its coordinated expenditure limits for the elections. Both the Pennsylvania and Minnesota Senate races were key to a Republican Senate majority, and given the closeness of both races, success appeared to depend on high voter turnout necessitating the maximum possible GOTV effort -- the kind of electoral activity known to be conducted by the NRLC.<sup>32</sup> Indeed because of the importance of these two races, the NRSC maintained close

---

<sup>31</sup> MCCL provided corroboration of a meeting with Carney, but stated it was in the summer of 1994 and concerned Rod Grams' position on pro-life issues and answers to MCCL's candidate questionnaire. See MCCL April 16, 1997 Interrogatory Response.

communication with the Grams and Santorum campaigns. As noted above, David Carney often traveled to the Grams campaign, providing advice on fundraising and finance, as well as engaging in general discussions concerning the status of the race. *See* Carney at 166-171. Similarly, Paul Curcio often traveled to the Santorum campaign, providing finance advice.

The circumstances leading to the NRSC's 1994 payments to NRLC, the fact that the payments occurred when NRSC had virtually exhausted its coordinated expenditure limits in Pennsylvania and Minnesota, and the ultimate use made of these funds support a strong inference that the NRSC made the payments with the knowledge and intent that they would be used to help elect the Republican candidates in the Pennsylvania and Minnesota senate races. Moreover, NRSC made these non-federal payments to NRLC with knowledge of the plans and needs of the Minnesota and Pennsylvania Senate races and thus constituted coordinated expenditures.

#### **B. SUMMARY**

The preceding evidence must be viewed with the understanding that the NRSC's essential function is to elect Republican candidates to the U.S. Senate. As the above discussion demonstrates, the NRSC's non-federal payments to the NRLC, ADF and CFA over a period of three election years were consistent with this function. These payments, made from NRSC's non-federal account, were made with the full understanding and expectation that the funds would

---

<sup>32</sup> The Pennsylvania and Minnesota elections remained very close in the final weeks of the campaign. In Pennsylvania, Rick Santorum, who had been gaining steady ground, faced several problems after October 25, including the endorsement of his opponent by Republican Theresa Heinz, widow of U.S. Senator John Heinz, and the airing of an advertisement containing videotape of Santorum advocating raising the eligibility age for social security. Polls also showed a drop in Santorum's support in the final two weeks which analysts attributed to the ad. Similarly, Rod Grams' opponent Ann Wynia was gaining on him in the twenty days before the election, placing the election within the 4 point margin of error.

be spent for the purpose of aiding federal Republican candidates in numerous Senate elections. Various factors afforded the NRSC this knowledge.

Initially, there is no question that the NRSC individuals involved in making the payments had a clear understanding of the recipient organizations' past electoral efforts and impact. In fact, in one instance this understanding was gained from an NRLC individual's past employment with the recipient organization. Curt Anderson had not only previously worked for CFA, but, in effect, directed the organization for a period of time. Further information was gained from meetings and conversations between the NRSC individuals responsible for the payments and the recipient organizations. A number of these meetings focused on the specific electoral efforts anticipated by the recipient in the upcoming election and, to a lesser extent, on the specific races where these efforts would be focused. Again, in at least one instance, the NRSC received a detailed written proposal addressing the recipient's projected electoral activity. ADF's 1993 proposal not only laid out in detail the various types of activities contemplated, but also the target states and the anticipated costs. Because of these contacts and NRSC personnel's understanding of the recipient organizations' traditional roles in elections, it is clear that the payments were made with the knowledge and intent that they be expended in a manner benefiting Republican Senatorial candidates. Indeed, the recipients' known expenditures conformed with this intent. Without exception, and for each of the three election years at issue, each recipient organization conducted activity designed to help elect Republican candidates, including various Senate candidates. Thus, the NRSC's non-federal payments to three organizations would be used to influence the election of Republican candidates in certain states in violation of Sections 441a(f), 441b(a) and 102.5(a)(1)(i).

Not only did the NRSC have knowledge of how these funds would be expended, the NRSC also had intimate knowledge of the plans, projects and needs of the very same campaigns benefiting from these expenditures. The NRSC maintained regular communication with its Senatorial candidate committees. As discussed in this report, these communications often focused on the campaigns' electoral plans and their financial status, and presumably their ability to fulfill these plans. It is this Office's position, after full consideration of the Colorado decision, that the information gained regarding the campaigns' plans, projects and needs from these communications suffices to render the NRSC's indirect electoral expenditures coordinated. The NRSC's activity in this matter differs from the activity at issue in Colorado in two significant respects. Unlike the facts at issue in Colorado, where there was no identifiable Republican candidate at the time of the transactions, in this matter the NRSC made all transactions after specific Republican candidates had emerged in the races. Equally significant, unlike Colorado, where there was no specific evidence of any contact between a candidate and the party committee, in this matter the NRSC engaged in numerous discussions with the candidates and their campaigns, gaining, at least a "general understanding" of the campaigns' plans, projects and needs. Colorado, 116 S.Ct. 2315 (1996).

During the three elections at issue various NRSC personnel, in the normal course of their duties, maintained substantial contact with the campaigns at issue. In 1992, Curt Anderson, as Southern Regional Director, had regular contact with numerous campaigns, including the Kasten campaign in Wisconsin and the Hartnett campaign in South Carolina. Mr. Anderson's contacts with these campaigns focused principally on strategy and fundraising, presumably providing him with an understanding of each of the campaigns' financial status and intended use of available funds. These contacts occurred at approximately the same time that Mr. Anderson was engaging



in discussions with the various recipient organizations. Paul Curcio, NRSC's then Political Director, maintained similarly frequent contact with the campaigns for all the election years at issue. In 1992, Mr. Curcio was in communication with the Packwood campaign in Oregon, the Kempthorne campaign in Idaho and the Coverdell campaign in Georgia, all beneficiaries of NRSC payments. Mr. Curcio's contacts also focused on strategy and fundraising, providing the NRSC with knowledge of these campaigns' planned expenditures and financial status. Mr. Curcio had similar involvement in 1993 with the Hutchinson campaign in Texas and in 1994 with the Grams campaign in Minnesota. These contacts too focused on strategy and finance, affording the NRSC knowledge concerning the campaigns' electoral needs. Last, David Carney, the NRSC then Deputy Executive Director, appears to have been the principal NRSC contact for the 1994 Santorum campaign in Pennsylvania. Like Messrs. Anderson and Curcio, Mr. Carney's communication with this campaign principally focused on fundraising, affording the NRSC a clear understanding of this campaign's funds availability. Both Mr. Curcio and Mr. Carney were involved in the making of the payments during the 1993 and 1994 elections. In light of the substantial involvement by the NRSC with the various campaigns benefiting from the payments, and the NRSC's knowledge of the recipients' intended expenditures, there is strong evidence that the NRSC made these payments to supplement the various campaigns known electoral needs. Because of this knowledge by the NRSC, these payments, although indirect, constitute coordinated party expenditures for the targeted campaigns.

#### **IV. REQUEST FOR PRE-PROBABLE CAUSE CONCILIATION**

On October 7, 1997, following the September depositions of three former NRSC employees involved in the activities at issue in this matter, the General Counsel and other

representatives of the Office of General Counsel met with NRSC counsel at the latter's request.

The purpose of the meeting was to explore the possibility of pre-probable cause conciliation.

2025 RELEASE UNDER E.O. 14176

**V. DISCUSSION OF PROPOSED CONCILIATION AGREEMENT**

2004.09.23.13.48.49

**VI. ADDITIONAL DISCOVERY**

2000-03-27-2000-03-27

**VII. RECOMMENDATION**

Approve the attached proposed conciliation agreement and the appropriate letter.<sup>33</sup>

1/15/98  
Date

Lawrence M. Noble (Lp2)  
Lawrence M. Noble  
General Counsel

**Attachments**

1. List of Key Players
2. Coalition Building Manual
3. Curcio Memo
4. Conciliation Agreement

Staff Assigned: Dawn M. Odrowski, Jose M. Rodriguez and Anne A. Weissenborn

<sup>33</sup> As discussed, the GC's recommendation to enter into conciliation prior to a finding of probable cause to believe has been made in the General Counsel's Report dated December 10, 1997 which was circulated to the Commission on December 11, 1997.